

# **IN THE HIGH COURT OF JUDICATURE AT PATNA**

## **CWJC No.14441 of 2008**

Lakshmi Narayan Singh, son of Peyare Prasad,

resident of village Pitaujhia, P.S. Bhadaur, District Patna. At present posted and working as Block Education Extension Officer, Kauakol Block, District Nawada Petitioner. Versus

1. The State of Bihar
2. The State Information Commission, Fourth Floor, Suchna Bhawan, Bailey road, Patna through its Registrar.
3. Sri P.N. Narayan, son of not known, the State Information Commissioner, Fourth Floor, Suchna Bhawan, Bailey Road, Patna.
4. The Deputy Secretary-cum-Joint Registrar, State Information Commission, Suchna Bhawan, Bailey Road, Patna.
5. The Director, Primary Education, New Secretariat, Patna.
6. The District Superintendent of Education, Nawada.
7. Shashi Bhushan Kumar, son of Nand Kishore Prasad, resident of village Baghi, P.S. Chakwai, District Nawada
8. The District Magistrate, Nawada. ..Respondents. For the petitioner : M/s Shivendra Kishore and Md. Anisur Rahman, Advocates.

For respondent

nos.2 to 4 : Mr. Lalit Kishore, Sr. Advocate with Mrs. Binita Singh, Advocate.

For the State : Government Pleader No.12 -----

PRESENT

HON'BLE MR. JUSTICE S.N. HUSSAIN

S.N. Hussain, J. This writ petition has been filed on behalf of the petitioner J.

challenging order dated 21.07.2008 (Annexure-6) by which the State Information Commissioner, Patna (respondent no.3) imposed a fine of Rs.25,000.00 against the petitioner and asked the Director, Primary Education Bihar (respondent no.5) to take action against the petitioner in

accordance with law and to inform the State Information Commission, Patna (respondent no.2) about the same by 31.10.2008.

2. The petitioner is Block Education Extension Officer, Kauakol Block in the district of Nawadah. Learned counsel for the petitioner submitted that during his posting he received a letter from the Commission dated 22.01.2008 (Annexure-2) directing him to give all the required informations to respondent no.7, who was applicant before the Commission, by 08.02.2008 and fixing the next date for hearing the case bearing Case No.3063 of 2007-08 on 12.02.2008 on which date the petitioner was directed to be present in court.

3. Learned counsel for the petitioner further submitted that the petitioner learnt that although respondent no.7 had never filed any application for any information required by him before the petitioner and he straightaway filed the aforesaid Case No.3063 of 2007-08 on 14.07.2007 (Annexure-1) before the Commission for seeking the required information. However, in compliance of the said order of the Commissioner, the petitioner supplied the required information to respondent no.7 (applicant before the Commission) vide his letter dated 06.02.2008 (Annexure-3).

4. It was further claimed by learned counsel for the petitioner that after the said case was filed before the Commission on 14.07.2007 the petitioner filed an application before the District Magistrate, Nawadah (respondent no.8) dated 10.07.2007 who vide order dated 30.07.2007 directed the District Superintendent of Education, Nawadah (respondent no.6) for necessary information and from the office of District Superintendent of Education, Nawadah, information was given to the petitioner that the said case had been filed before the Commission in which date had also been fixed. Hence the petitioner appeared before the Commission and submitted his explanation on the date fixed, whereafter the Commission vide its order dated 22.01.2008 (Annexure-2) directed the petitioner to remain physically present before the Commission on the next date 12.02.2008 and to explain why a fine of Rs.250.00 per day be not imposed against him with effect from 16.01.2008 under section 20(1) of the Right to Information Act, 2005 (hereinafter referred to as 'the Act' for the sake of brevity).

5. It was also claimed by learned counsel for the petitioner that in compliance of the said order of the Commission, petitioner gave full information with regard to the selection of Block teacher to respondent no.7 vide letter dated 06.02.2008 (Annexure-3). It was also stated that when in spite of several informations respondent no.7 did not turn up in the office of the petitioner then the petitioner himself went to the residence of respondent no.7 with full information, but he was not available and his sister-in-law Poonam Devi received the letter, information of which was given to the Commission vide letter dated 10.02.2008 (Annexure-3/A).

6. Learned counsel for the petitioner further stated that he was suspended in another matter of Bakri Brama Block and his Headquarters during suspension period was fixed at the Regional Deputy Director of Education, Gaya where the petitioner is continuing as yet, hence he could not be present before the Commission on 19.03.2008 when the matter was taken up and the Commission directed him vide order dated 27.03.2008 (Annexure-4) to furnish full information to respondent no.7 and also to file explanation as to why fine be not imposed against him with effect from 01.11.2007. It was also claimed that the petitioner had no knowledge or information

about the said order and he did not comply the same specially when he had already complied the order much earlier, but the Commission took up the matter on 19.05.2008 (Annexure-5) holding that the petitioner had not complied the specific direction of the Commission and imposed heavy cost of Rs.23,000.00 from 19.03.2008 till 12.05.2008 and further cost of Rs.250.00 per day ordered to be continued till the date of supply of information. 7.Learned counsel for the petitioner also argued that the said order was passed in absence of petitioner and no information about the same was sent to him as he was posted at Gaya during the period of suspension and hence the impugned order dated 21.07.2008 (Annexure-6) was passed by the Commission enhancing the fine to Rs.25,000.00 and directing the Director, Primary Education, Human Resources Development Department to enquire into the matter with regard to the alleged illegal appointment of the teacher concerned on the post as visually impaired person and to inform the Commission by 31.10.2008.

8. In the aforesaid facts and circumstances, the petitioner raised point that respondent no.7 had neither applied before the petitioner nor he filed any appeal under section 9 of the Act against the petitioner for incomplete information, etc. and after receiving information from the Commissioner the petitioner had immediately taken all necessary steps and supplied all the required informations to respondent no.7 within the time granted by the Commission sending copies thereof to the Commission, but this aspect of the matter as well as the explanation of petitioner was not considered although it clearly showed that there was no question of petitioner persistently failing to act as per the requirement of law. It was also stated that the orders passed by the Commission were behind the back of petitioner about which no information was sent to him on his changed official address. It was also stated that the impugned order is violative of the provisions of law and is directly in the teeth of a decision of this court in case Arbind Prasad Singh vs. The State of Bihar & Ors., reported in 2010 (3) P.L.J.R. 337.

9. On the other hand, learned counsel for the State and its authorities stated that although no application under the proforma was filed before the petitioner by the complainant who was a blind person and hence he filed an application directly before the Commission. He further submitted that the Commission had specific authority and power under the Act to take steps on such applications filed before it and hence it took all necessary steps in that regard as required in law directing the petitioner to furnish the required information to the applicant. The entire order sheet of the Commission has been annexed as Annexure-A to the counter affidavit. It was also stated that order dated 22.01.2008 (Anneuxre-2) was passed by the Commission for giving complete information, as required, to respondent no.7, but vide letter dated 06.02.2008 (Anneuxre-3) the petitioner supplied only the list of handicapped employees and no other information was supplied as per the direction of the Commission.

10. Learned counsel for the respondents further submitted that when the Commission passed order dated 22.01.2008 in presence of the petitioner he had full knowledge and information about the case and the entire procedure and hence due to his non-appearance on the subsequent dates and non-compliance of the specific directions of the Commission the impugned order was passed, as it was mandatory upon the petitioner to comply the order of the Commission as per the provision of section 20 of the Act. Moreover, the petitioner even if he was under suspension having his Headquarters at Gaya was duty bound to appear before the Commission on the dates fixed, but he failed to do that. It was stated that the impugned order had been passed after issuing

notice and considering the explanation submitted by the petitioner and hence it cannot be said that there is any defect in the process adopted by the Commission.

11. Considering the entire facts and circumstances of the case as well as the pleadings of the parties including the materials on record, it is quite apparent that a complainant had right to know whether earlier appointees were better qualified and for that purpose the provision of the Act has been provided by the law makers according to which withholding any such information is palpably illegal and also amounts to mischief. The provisions of the Act clearly specify that an aggrieved person may apply for such information from the department concerned and also authorize the Commission to accept direct applications from such persons. In the said circumstances, filing of application by respondent no.7 before the Commission cannot be said to be illegal or improper. Furthermore, the impugned order was passed by the authority after fully observing the procedure in accordance with law including issuance of notice, giving opportunity to the petitioner and considering his show cause.

12. From order dated 22.01.2008 (Annexure-2) it is quite apparent that the Commission had specifically directed the petitioner to give full information to respondent no.7 as required by him, but from letter dated 06.02.2008 (Annexure-3) sent by the petitioner to respondent no.7, it is quite apparent that only a list of appointees was given in the said letter but no further details with respect thereto were given. Hence, the Commission had to issue fresh directions to the petitioner vide order dated 27.03.2008 (Annexure-4) asking him to comply the orders fully, but the petitioner neither complied the said orders nor even appeared before the Commission on the consecutive dates fixed in the case.

13. In the said circumstances, it is quite apparent that the petitioner having full information of the specific orders of the Commission neither supplied the required informations to respondent no.7 about the basis on which teachers were appointed on the post reserved for handicapped persons nor he made any such statement that the said teacher was appointed without any handicap certificate issued by the government. Thus it is absolutely clear that the petitioner for the reasons best known to him concealed the necessary facts with respect to the main issue involved in the matter and in the process the petitioner even did not comply the specific repeated directions of the Commission and absented himself on the dates fixed in the case in spite of having full knowledge and information about the same and hence the Commission was quite justified in passing the impugned order against the petitioner.

14. This court does not find any illegality in the impugned order of the State Information Commissioner, Patna (respondent no.3) nor does it find any merit in this writ petition, which is accordingly dismissed.

Patna High Court, (S.N. Hussain, J.) Dated 09.09.2010

N.A.F.R./Harish